

Application No.: 09/735,574

REMARKS/ARGUMENTS

Applicants assert that no new matter is presented by these amendments and respectfully request entry of the same.

Claim objections

Claim 1, 14, and 27 are objected to because the word "outputting" was misspelled. Applicants have corrected the claims as indicated. Withdrawal of this objection is respectfully requested.

Rejections under 35 U.S.C. § 101 should be withdrawn.

Claims 1-6, 14-19, and 27-32 are rejected under 35 U.S.C. 101 because the claimed invention is allegedly directed to non-statutory matter. The Examiner states that using the normalization factor for gene analysis is still a form of data that does not provide with a physical transformation and therefore, non-statutory subject matter.

Applicants respectfully disagree. The instant claims produce concrete and tangible results. The claimed invention provides for a computer implemented method for calculating the normalization factor of a microarray analysis wherein that normalization value is used for gene expression analysis. Applicants hereby submit that the present invention is statutory because the results provided by the current invention are tangible, concrete and physical results. Therefore not abstract, law of nature or a natural phenomenon. It is very well known that the ever increasing interest and availability of expression array data comes the need for new methods of analysis of gene expression analysis. Statistical problems abound, in part due to the high number of dimensions,

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numerous sources of variation, and few replicates. The present invention provided with a method to address one of these problems and applying these methods to data obtained from a number of different expression array based studies to further exemplify the tangibility, concrete and physical results of the present invention.

Applicants respectfully request withdrawal of the rejection of Claims 1-6, 14-19, and 27-32 under 35 U.S.C. 101.

Rejections under 35 U.S.C. § 103 should be withdrawn.

Claim 1-6, 14-19, and 27-32 are rejected under 35 U.S.C. 103(a) as allegedly being unpatentable over Chin et al. (US 6,470,277); taken in view of the legal decision of *In re Gulak* [703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983)].

Examiner states that the further limitation of "using said normalization factor for gene expression analysis and outputting the result of said analysis" does not provide with a practical transformation and that the presently pending claims remain non-functional and therefore it does not distinguish the prior art in terms of patentability. Because this rejection under 35 U.S.C. §103 is related to the rejection of the claims under 35 U.S.C §101, Applicants respectfully submit that in view of the above remarks, the rejection of Claims 1-6, 14-19, and 27-32 under 35 U.S.C. §103(a) should be withdrawn.

CONCLUSION

For these reasons, Applicants believe all pending claims are now in condition for allowance. If the Examiner has any questions pertaining to this application or feels that a telephone conference would in any way expedite the prosecution of the application, please do not hesitate to call the undersigned at (408) 731-5000.

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The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to Deposit Account 01-0431.

Applicants respectfully request that a timely Notice of Allowance be issued in this case.

Respectfully submitted,

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